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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 123

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO, *Petitioner*

v.

GEORGE W. HARDEMAN, *Respondent*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

STATEMENT OF THE CASE

Respondent adopts the statement of the case as set forth by the petitioner but adds the following thereto:

On Page 6 of Petitioner's Brief, petitioner states that the trial committee found Hardeman to be guilty as charged. That the trial committee's determination of guilty as charged was sustained by a vote of the members which voted by secret ballot to expel Hardeman indefinitely.

No evidence was taken by the local lodge and the local lodge vote amounted to purely a political motion since they did not hear the evidence. The expulsion vote was entirely unnecessary since one of the charges, Article 13,. Section 1 [1], carried with it automatic expulsion upon finding of of guilt.

Petitioner further states on Page 7 of its brief that Hardeman only signed the out of work list twice and job referral rules for employment required unemployed applicants to report and register each month and the rules stated that their name would be removed in the absence of such report and registration. Petitioner omits the evidence of Hardeman to find work in his trade after losing his card, and thereby belittles the relationship of the loss of his card to his ability to find work.

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[1] The constitutional provision was Article XIII. Section 1 of the Subordinate Lodge Constitution (D. Ex. 5 (A. 63): Tr. 388). providing:

"Any member who endeavors to create dissension among the members; or who works against the interest and harmony of the International Brotherhood or of any District or Subordinate Lodge:

cont'd.

Hardeman sought work in many shops and was turned down (Tr. 131). Hardeman further testified that his name continued on the out of work list (Tr. 134). Contrary to Wise's testimony that he only signed the list twice as cited in petitioners statement of fact as if it were uncontroverted evidence. Hardeman had been a long time member of the local and was well acquainted with the rules and regulations and customs of running the out of work list. Therefore his statement that he kept his name on the out of work list was more than enough evidence to justify a jury's finding of fact in this instance.

SUMMARY OF ARGUMENT

The Courts below applied a Standard of Review which was consistent with the intent of Congress and which has been adopted by all of the other Circuit Courts of Appeal.

Petitioner argues legislative intent by random statements from several Congressmen and Senators. All of these men have aspired to National prominence since the passage of the act and it is certain that their statements were made with an eye toward their political consequences.

In addition to this, these several random statements could not be considered to represent the collective intent of a legislative body of 535 individuals. The best way

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who advocates or encourages a division of the funds, or the dissolution of any District or Subordinate Lodge, or the separation of any District of Subordinate Lodge from the International Brotherhood; who supports or becomes a member of any dual or subversive organizations which shall be hostile to the International Brotherhood or to any of its subordinate Lodges, or which is antagonistic to the principles and purposes of the International Brotherhood, shall upon conviction thereof be punished by expulsion from the International Brotherhood."

to determine legislative intent is the plain meaning of the act when considered in the context of our law at that time.

Respondent submits that the requirements of the act are both substantive as well as procedural. Section 101 (a) (5) (A) requires the accused to be served with written charges and (B) requires that he be given time to prepare his defense. These requirements are procedural.

Section 101 (a) (5) (C) requires that he be given a full and fair hearing. This requirement is substantive, since it gets into the substance of the disciplinary proceeding to determine if the member was given a full and fair hearing.

Petitioner concedes that all of the Circuit Courts of Appeal who have ruled on this question have adopted the "Some Evidence" rule or that there must be some evidence to support the charges of which the accused is found guilty in order to meet the requirements of a "full and fair hearing" as required by Section 101 (a) (5) (C). This is the same test as applied in the instant Hardeman and Braswell case. Therefore Petitioner admits that the ruling in the instant case does not conflict with the other Circuit Courts of Appeal.

However Petitioner argues that the courts have no right to interpret the meaning of Union Constitutions and By-Laws upon which charges are brought. This attacks the ruling of all the Circuit Courts of Appeal since if the Courts can review the evidence taken by Union Trial Boards they must make an interpretation of the charges to compare with the evidence taken in order to apply the "some evidence" rule. Petitioner is attacking the rulings of all of the Circuits from a different point of view.

Respondent further contends that a strict plain meaning interpretation is proper. Other Circuits have applied this rule also. The Act itself requires it since it does require that the accused be served with written specific charges. The intent of Congress is to require that the member who may or may not be barely literate understand what he is accused of. To then hold that a vague or liberal or loose construction of the charge is proper clashes with the key word "specific" as used in the act.

Ultimately Petitioner concludes his argument by arguing the evidence in the case. Since he admits that the Courts below adopted the same doctrines of Law as expounded by the other Circuits he is in effect asking this court to rule on a question of fact rather than the original question of Law he proposed.

Respondent submits that Hardeman was charged and found guilty of 2 charges. One was more serious since the Constitution required his expulsion if he was found guilty of it. If he were only found guilty of the lesser charge, his punishment may not have been so severe but could have amounted to a simple fine. There was absolutely no evidence to support a finding of guilt under the more serious charge. This was the ruling of the Court below and it further ruled that this made the expulsion unlawful. Petitioner's argument does not attack this ruling but emphasizes the possibility of guilt under the lesser charge. The requirement of "Specific Charges" implies a specific finding of guilt.

Respondent further submits that the National Labor Relations Act does not preempt an LMRDA action when loss of wages are a proximate consequence of wrongful discipline. The doctrine of preemption is a judicial rule to prevent conflict of State Law and Federal Law in the field of Labor Law.

It does not apply when Congress legislates a new federal action. Title 29 U.S.C.A. Sec. 412 authorizes a civil action in a District Court for such relief as may be appropriate. Surely any damages suffered as a proximate consequence of wrongful discipline are such "relief as may be appropriate".

The Act is not limited to injunctive relief since it uses the term "civil action" which is traditionally a suit for damages and need not include an injunction. Therefore the plain meaning of the Act rules out the application of the Doctrine of Preemption.

The instant case is highly significant to all who participate in the labor movement in this country. If this case is affirmed it will require the management of Unions to protect the rights of their members as required by LMRDA. If it is reversed it will make the act worthless.

Hardeman could not afford the legal fees of a trial in the District Court for an injunction. He could not afford the Appeal to the 5th Circuit or the proceedings before this Honorable Court. He could not even have paid for the printing of the Legal briefs in this case if he had only sought injunctive relief.

Hardeman is not just an individual. He is "everyman" in the labor movement. His problems are shared by every member of a Trade Union in this Country. They cannot afford injunctive relief and appeals, especially when they are out of work due to being wrongfully deprived of their memberships. Their causes would go unsung and they would have no protection. Their only door to the courtroom is through a civil damage suit.

ARGUMENT

I.

THE COURT BELOW APPLIED A STANDARD OF REVIEW CONSISTENT WITH THE INTENT OF CONGRESS AND CONFORMING WITH THE STANDARD OF REVIEW APPLIED BY OTHER CIRCUIT COURTS OF APPEAL.

The AFL-CIO in their brief go far afield and question the legal right of a union tribunal to determine whether or not there is some evidence to support a finding of guilt of charges brought against a member. This question is ridiculous. To so hold would completely emasculate the plain meaning of the words "a full and fair hearing" as required in Section 101 (a) (5) of LMRDA.

Petitioner in its brief refers to this section and contends that the requirements are no more than procedural, citing several sample statements of several senators in arguing his legislative intent. Irregardless of these statements by the several senators the legislative intent is best expressed by the plain meaning of the words of the act itself.

There are one hundred members of the senate and four hundred thirty-five members of the house. To argue the legislative intent of this body of five hundred thirty-five individuals by random statements of a few is certainly not the place to look for the intent of the many who voted in favor of the bill as passed.

I am sure that the intent of each individual, congressman and senator, who cast his vote in approval were many, diverse and varied.

I submit further that the remarks of senators and con-

gressman published in the Congressional Record and other public documents do not necessarily reflect their own individual intent since such statements and publications are necessarily worded with an eye toward their political effect on powerful lobbies and voting groups who opposed the passage of the Landrum–Griffin Act.

This is particularly true when our country's history in the last eleven years has shown us that these men were aspiring to the heights of national prominence at the time they made the remarks quoted by petitioner and the AFL-CIO.

Respondent submits that the best place to look for legislative intent is the language of the act itself and the plain meaning of the words used as interpreted in the administration of the law.

Section 101 (a) (5) of the LMRDA states:

> "Safeguards Against Improper Disciplinary Action – No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for non–payment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

Respondent submits that the first two requirements, A & B, are procedural. Respondent further submits that Section C deals with substantive rights. This section gets down to the meat of the coconut and covers a variety of things which deal with substantive rights that are necessary for a full and fair hearing.

Petitioner admits on Page 18 of its brief that the Second, Third, Fifth and Ninth Circuits, which are all of the circuits that have ruled on the question of a full and fair hearing followed the standard of review as followed in Braswell and in the instant Hardeman case which is, there must be "some evidence" to support a finding of guilt of charges brought against a member of a union in a union disciplinary proceeding. Petitioner cites no case which has ruled to the contrary. Therefore he apparently concludes and concedes that in interpreting Section 101 (a) (5) (C) that the settled law among the Circuit Courts of Appeal recognizes that in order to have a full and fair hearing that there must be "some evidence" to support the charges of which the the accused is found guilty.

He does however attack the interpretation of the District Court and the Fifth Circuit Court of Appeals of the charges made and contends that they had no right to interpret the sections of the constitution with which Hardeman was charged.

What is the difference? On the one hand he admits that courts have the right and duty to examine the evidence to see if they conform to the charges but denies the right of the court to examine the charges to see if it conforms to the evidence.

This assertion is ridiculous for one cannot be done without doing the other. They are both the same window but looking through it from opposite sides. Therefore, since these Circuit Courts of Appeal have uniformly established the law to be that a court may examine the evidence to see if there is some evidence to support the charge, then they have also established the principle that a court may interpret the meaning of the charge in order to apply it to the

evidence for the "some evidence" test. Otherwise we would not know if the evidence supported the charge.

To examine the evidence without interpreting the charge would put a court in a position of not knowing whether evidence of larceny proves a charge of embezzlement since it could not interpret the statute on embezzlement and know its meaning.

Petitioner therefore continues his argument by stating that the Fifth Circuit gave lip service only to the "some evidence" rule in Braswell and in Hardeman since Hardeman was affirmed on authority of the Braswell opinion. He states however that in fact the Fifth Circuit did not apply this "some evidence" rule and substituted an erroneous judgment instead.

On Page 21 in petitioner's brief he states that the Fifth Circuit's error was to the effect of its statement in Braswell, "it is well established that penal provision in union constitutions must be strictly construed". Petitioner asserts that there is no basis for this principle.

However many cases have applied this principle. Among them were Braswell v. International Brotherhood of Boilermakers, 388 F. 2d. 193, Cert. Den., 391 U.S. 935; Allen v. International Alliance of Theatrical, Stage Employees, et al, 338 F. 2d. 309; and Simmons v. Avisco, Local 713, 350 F. 2d. 1012, wherein it was stated:

> "It is established law that a union cannot discipline its members except for offenses stated in its consitution and by-laws, and that the courts lack the power to recognize "implied offenses" and thereby rewrite the union's constitution and by-laws."

Respondent further contends that this principle of strict construction is further enforced by the mandate of congress in 29 U.S.C. Sec. 411 (5) (A) which requires the accused to be served with "written specific charges".

Such a requirement necessarily implies a further requirement of strict construction of the charges. To hold otherwise would destroy the intent of congress in requiring "written specific charges" for such a requirement would be useless if the rule of strict construction and plain meaning were not applied to those charges, and there would be no "full and fair hearing" as required in 29 U.S.C. 411 (5) (C). Therefore congress has expressed a statutory mandate enforcing the rule of strict construction.

As stated before, petitioner recognizes and admits that the "some evidence" rule as stated in Braswell and applied in Hardeman is the proper standard of review. Basically then his argument is not one of law but is one of fact, for he contends in his brief that the Fifth Circuit Court of Appeals abused this rule and rejected certain evidence as unsupportive and rejected a reasonable interpretation of the union's constitution. His argument is not then one of law which this court should decide but he is asking this court to review the facts and make a finding of fact in his favor.

A. APPLICATION OF THE APPROPRIATE STANDARD OF REVIEW TO THE FACTS OF THE INSTANT CASE.

It is respectfully submitted that whether the evidentiary test is formulated as: (1) Denial of due process to take action on charges "unsupported by any evidence", (2) "Implicit in the requirement of a full and fair hearing is the requirement that there be some evidence to support the

charges made", (3) "A close reading of the record is justified to insure that the findings are not without any foundation in the evidence", the evidence presented to the trial committee of the Local Lodge and the trial committee of the Executive Council was not sufficient to sustain the findings of those bodies and justify Hardeman's expulsion.

In petitioner's brief he goes to great extremes to argue the lawfulness of the expulsion under Article XII, Section 1 of the By-Laws and argues that this charge does conform to the evidence. His argument is wasted in this case since it does not attack the ruling of the District Court on the question of the lawfulness of the expulsion.

The charges made were that Hardeman had violated Article XII, Section 1[2] and Article XIII, Section 1[3], Subordinate Lodge Constitution (see statement of facts, Petitioner's Brief, Page 4.) The trial committee determined that Hardeman was "guilty as charged" (Petitioner's Brief, Statement of Facts, Page 5). The International Union sustained these findings. (Petitioner's Brief, Statement of Facts, Page 6)

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[2] It shall be a violation of these By-Laws for any member through the use of force or violence or the threat of the use of force or violence to restrain, coerce or intimidate, or attempt to restrain, coerce or intimidate any official of this International Brotherhood or Subordinate Lodge to prevent or attempt to prevent him from properly discharging the duties of his office.

[3] Section 1. Any member who endeavors to create dissension among the members; or who works against the interest and harmony of the International Brotherhood or any District or Subordinate Lodge; who advocates or encourages a division of the funds, or the dissolution of any District or Subordinate Lodge, or the separation of any District or Subordinate Lodge from the cont'd.

Therefore since Hardeman was found "guilty as charged", he was found guilty of violating both sections and it is only sufficient that the evidence failed to meet the aforementioned tests for one charge rule to make the expulsion wrongful and unlawful.

Even if there was "some evidence" to support Article XII, Section 1 (which respondent does not admit) Hardeman was in the position of a man going to trial on a two count indictment wherein one count charged a simple assault and the second count charged rape; the evidence being sufficient to support the simple assault but there being no evidence to support the rape charge and the jury coming back with a verdict "guilty as charged". Their verdict would necessarily convict him of the rape count and surely we could not say he had a fair trial.

This was the ruling of the District Court as admitted in Petitioners brief wherein the court charged the jury:

> "Now there may be, and I am not ruling on it one way or the other, but I will say this, that there is evidence in here which might support a finding of guilty under Section 1 of Article XII of the Subordinate Lodge By-Laws, but the trial body said we find him guilty and we recommend that he be expelled. They did not say we find him

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International Brotherhood; who supports or becomes a member of any dual or subversive organization which shall be hostile to the International Brotherhood or to any of its subordinate Lodges, or who is antagonistic to the principles and purposes of the International Brotherhood, shall upon conviction thereof be punished by expulsion from the International Brotherhood.

guilty under either one section or the other. They said they found him guilty. Inasmuch as there is nothing here which would support a conviction under this section [4], then I think the verdict cannot stand and his being convicted, the penalty for which was expelling him, and I think, inasmuch as there is no evidence which would support a finding of the board was erroneous and cannot stand in that respect." (A 37–38)

Earlier the trial court in its charge stated:

"The notice which was sent to Mr. Hardeman by the president of the Local Union, in effect says, we are going to have a hearing and you are charged with violations of Article XIII, Section 1 of the Subordinate Lodge Constitution. Now that is what they said he was going to be tried under, Article XIII, Section 1. I will paraphrase it, *** (court here reads the text of Article XIII, Section 1)***

"As I have said, I have read the entire transcript and I have found nothing which would support a finding of guilt under that particular section."

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[4] Referring to Article XIII, Section 1.

Therefore petitioners elaborate argument as to the application of Article XII, Section 1, is completely irrelevant since it does not attack the ruling of the District Court and therefore does not attack the affirmance of the Court of Appeals.

Let us then examine Article XIII, Section 1, to see how this applies to the evidence taken by the union.

This article clearly refers to someone engaging in some sort of activity of sedition against the union. Someone who would be working to cause a conspiracy to dissolve the union, to make the members dissatisfied and thereby destroy the organization itself. This section cannot in any way be construed to cover an offense when one of the members gets into a fight with one of the officers of the union. This is an attack on an individual by an individual and is resolved among individuals. It is not an effort to destroy the organization itself.

The Fifth Circuit Court of Appeals interpreted Article XIII, Section 1 in its opinion in International Brotherhood of Boilermakers v. Braswell, 388 F. 2d. 193, Cert. Den., 391 U.S. 935, when reviewing this same transcript since Braswell was tried simultaneously with Hardeman as a co-defendant. There the court said:

> "Article XIII, Section 1 of the Constitution on its face is directed at threats to the union as an organization and to the effective carrying out of the union's aims."

Respondent does not contend that Hardeman should not have been disciplined for his actions. Respondent does contend that Hardeman was found guilty of a charge which

would not apply and therefore his expulsion was erroneous. If Hardeman had been properly charged I submit that his punishment would have been less than expulsion. If he had been properly charged and had been expelled I would submit that a proper theory of the case would be that Hardeman was denied a full and fair hearing in that the punishment did not fit the offense. If this had been the case, Hardeman would have been in the position of an accused being charged and found guilty of running a red light and being given the death penalty. Although it has never been presented I would submit that the requirement of a full and fair hearing requires that the punishment fit the offense. But this is not the case here.

II.

THE NATIONAL LABOR RELATIONS ACT DOES NOT PREEMPT AN ACTION BROUGHT UNDER SECTION 102 OF THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT WHEREIN A FORMER UNION MEMBER, CLAIMING WRONGFUL EXPULSION, DOES NOT SEEK RESTORATION OF MEMBERSHIP RIGHTS BUT CLAIMS DAMAGES FOR ALLEGED LOSS OF EMPLOYMENT IS A CONSEQUENCE OF HIS WRONGFUL EXPULSION.

Petitioner relies primarily on San Diego Building Trades Council v. Garmon, 359 U.S. 236, and Local No. 207, International Association of Bridge, et al v. Jacob Perko, 373 U.S. 701, 10 L. ed. 2d. 646, in his argument for preemption. These cases are not precedent for the case now before this court.

The Garmon case was decided before the passage of the Labor Management Reporting and Disclosure Act of 1959. The facts in this case are in no way similar to the Hardeman case.

In the Garmon case the union had demanded a contract from management to retain in their employment only workers who were members of the union or who had applied for union membership within thirty days. Management had refused this contract on the grounds that its membership had not selected the union as their collective bargaining agent. The union began picketing the company and the company obtained an injunction from a state court and stopped the picketing. There was no case of wrongful discipline and there was no Labor Management Reporting and Disclosure Act to apply.

The Perko case likewise does not apply. Here plaintiff had instituted his action in a state court in Ohio seeking damages under common law to work as a foreman. The union had interfered in his job as a foreman. There was no expulsion and no disciplinary actions taken by the union. The Landrum-Griffin Act was not involved nor did it apply.

Petitioner also argues legislative intent in his brief. He cites several statements from various senators claiming these are evidence of the intent of congress that the Labor Management Reporting and Disclosure Act be subject to the doctrine of preemption by the National Labor Relations Act. The statements when read in his brief merely express a fear that a doctrine of preemption will bar such actions from being brought in state courts where such states had enacted legislation to protect members rights.

Petitioner also argues that in the case of International Association of Machinists v. Gonzales, 356 U.S. 607, 78 S. Ct. 923, 2 L. ed. 2d. 1018, that this Honorable Court in affirming this decision and rejecting the doctrine of preemption was merely allowing Gonzales to "fill out" his remedy offered him under the state law. It is presumed that the applicable state law in this case allowed him an injunction and nothing else.

Respondent submits that none of the authorities cited are controlling. Preemption is purely a jurisdictional doctrine to prevent conflicts between federal and state policies. International Brotherhood of Boilermakers v. Braswell, 388 F. 2d. 193 Cert. den. 391 U.S. 935. This court stated concerning the doctrine of preemption the following in Retail Clerk's International Association v. Schermerhorn, 163, 375 U.S. 96, 94 S. Ct. 219, 11 L. ed 2d. 179:

> "Garmon *** merely rationalizes the problems of coexistence between federal and state regulatory schemes in the field of labor relations *** the purpose of congress is the ultimate touch stone." (Cited in Braswell)

Petitioner's suit was framed and brought under Title 29, USCA Sec. 411, Sub-Sec. 5 which states:

> "***No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for non-payment of dues, by such organization or by any officer thereof, unless such member has been (a) served with written specific charges; (b) given a reasonable time to prepare his defense; (c) afforded a full and fair hearing.

The petitioner's action as stated in the complaint is clearly based upon the Labor Management Reporting and Disclosure Act of 1959. The complaint alleged in several counts that plaintiff was expelled from the union and was not afforded a full and fair hearing with the terms of Sub-Section (C) Title 29, USCA, Sec. 411, Sub-Sec. 5. The complaint and evidence clearly showed that the union's board action and expulsion was a result of disciplinary

action against the appellee within the meaning of the above quoted section of Labor Management Reporting and Disclosure Act.

Petitioner also contends that the Labor Management Reporting and Disclosure Act of 1959 not only made it unlawful for a union to expel a member, without a full and fair hearing as aforesaid, but also selected a forum for the enforcement of any infringement on the rights of a union member under the Labor Management Reporting and Disclosure Act. Petitioner contends that the forum selected by Congress under this act was a Federal District Court, and not the National Labor Relations Board. In support of this contention, Respondent cites Title 29, USCA, Sec. 412, which reads as follows:

> "Any person whose rights secured by the provision of this sub-chapter have been infringed by any violation of this sub-chapter may bring a civil action in a District Court of the United States, for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the District Court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

This section clearly selects the District Court to be the forum for any complaint arising under the Landrum-Griffin Act of 1959. The section makes it mandatory that if any of these rights have been infringed, as was in this case, that they may bring a civil action in the district Court under the Landrum-Griffin Act.

Respondent's claim for loss of wages and fringe benefits, as a result of this wrongful expulsion, did not cause his action to be preempted by the National Labor Relations Act. The graveman of this case was the wrongful expulsion and violation of the Labor Management Reporting and Disclosure Act, and the damages claimed were the resulting damages for the violation of this act, or "***such relief ***as may be appropriate".

Petitioner's complaint alleges that the damages claimed was loss of income which was brought about as a direct and proximate result of the wrongful expulsion of Hardeman. Title 29, USCA, as quoted above allows a civil action "for such relief *** as may be appropriate". Surely any injury which was brought about as a proximate consequence of the wrongful expulsion would be "such relief *** as may be appropriate". Therefore the Judicial doctrine of preemption which was conceived to prevent the conflict of state and federal jurisdictions can certainly have no application in the face of a mandate from congress.

This civil action referred to in Title 29, USCA, Sec. 412, does not have to be an injunction. Respondent contends that the wording of Section 412 states simply a civil action and the parenthetical portion, "including injunctions", indicates the intent of Section 412 to mean a civil action may be brought either with an injunction or without an injunction. The only other type of relief obtainable in a court of law is damages.

Hence, the language of the Labor Management Reporting and Disclosure Act clearly sets forth the sort of wrong which is prohibited between a union and its member and also selects the district court as a forum in which any suit filed for the enforcement of this act is to be brought. The

damages which are sought in such an action does not change the nature of the action. Therefore respondent submits that a claim for loss of wages or income does not make a suit under Section 102 subject to the doctrine of preemption. "The purpose of Congress is the ultimate touch stone", Retail Clerk's International Association v. Schermerhorn, 1963, 375 U.S. 96, 94 S. Ct. 219, 11 L. ed. 2d. 179.

III.

SIGNIFICANCE OF THIS CASE

Respondent submits that the labor movement as developed in this country is one which has evolved from the capitalistic free enterprise system. In other lands where there was no capitalistic free enterprise system the working class turned to communism to solve their burdens and free themselves from oppression by management. In our country following the free enterprise tradition the laboring man banded together in unions in order to barter and trade freely for his product which was the fruit of his labor.

The labor movement has come a long way since the days when the early members of labor unions were tried for conspiracy when seeking to enforce their right to barter and negotiate the price for their product.

Today the laboring man in the United States enjoys an excellent standard of living and many fringe benefits. The problem is no longer long working hours, being under paid and being otherwise exploited by management. In its place his problems came from the solution of these former problems. They arise from the empire that the formation of the trade unions created in this country and from the little dictators and "labor barons" in labor management.

Congress recognized this and this resulted in the bill of rights and Section 102 of the Landrum-Griffin Act. If this section is given its full force and effect it will force the mighty labor unions of this country to recognize and protect the rights of their individual members. They can no longer afford to operate on a dictatorial basis and ignore the rights of the individual.

In the instant case Hardeman was railroaded by a local business agent because of personal or other differences which can brew for a period of time. As in any system of executives, the higher executives have to back up the lesser executives in order to enforce the power structure of any organization be it large corporations, the military or a trade union. Therefore the top echelon backed up and enforced Hardeman's expulsion irregardless of the evil it wrought upon this individual and his family.

If the Hardeman case is affirmed it will mean that no longer can a local business agent run his local with the power of a dictator threatening trumped up disciplinary action against any individuals that may oppose him. If this case is reversed the purpose of congress in protecting the rights of the individual in the labor unions in this country is destroyed. George Hardeman is not just an individual. He is "everyman" among the forty million members of the unions in this country. Union management can no longer ignore the evil that is done to these individuals if this case is affirmed.

To say that the management of the trade unions in this country is aware of this is to only point out the obvious. They have even procured the top echelon of the AFL–CIO to file an amicus curiae brief in this cause to fight this decision.

CONCLUSION

For the reasons as set out before I respectfully submit that this case should be affirmed.

Respectfully submitted,

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